



PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
(Case No. 03-445)

In re Application of:

Daniel L. Moore

Serial No.: 09/903,040

Filed: July 10, 2001

For: Apparatus and Method to Synchronize  
Multimedia Playback Over a Network  
Using Out-Of-Band Signaling

Group Art Unit: 2151

Examiner: Not Assigned

RECEIVED

JUN 19 2003

Technology Center 2100

Commissioner for Patents  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

**POWER OF ATTORNEY BY ASSIGNEE OF ENTIRE INTEREST**  
(REVOCATION OF PRIOR POWERS)

As assignee of record of the entire interest of the above identified

☒ application

☐ patent

**REVOCATION OF PRIOR POWERS OF ATTORNEY**

all powers of attorney previously given are hereby revoked and

**NEW POWER OF ATTORNEY**

The undersigned hereby appoints all of the practitioners associated with the Customer Number provided below to prosecute this application and to transact all business in the Patent and Trademark Office connected therewith and directs that all correspondence be addressed to that Customer Number:

Customer Number: **020306**

Principal attorney or agent: Bradley J. Hulbert

Telephone number: 312-913-0001

**Assignee of Entire Interest:**

Name: Digital Networks North America, Inc.

Address: 19 Chapin Road

Pine Brook, New Jersey 07058-9777

**EVIDENCE AND CERTIFICATION OF CHAIN OF TITLE**

☐ Recorded in PTO on \_\_\_\_\_

Reel \_\_\_\_\_

Frame \_\_\_\_\_

☒ Recorded herewith.

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**ASSIGNEE CERTIFICATION**

In accordance with 37 C.F.R. § 3.73 the assignee hereby certifies that the evidentiary documents with respect to its ownership have been reviewed and that, to the best of assignee's knowledge and belief, title is in the assignee seeking to take this action.

Date: 6/12/03

  
Signature

Name: Jeff Hastings

Title: President

2159



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TRANSMITTAL LETTER

Commissioner for Patents  
P.O. Box 1450  
Alexandria Virginia 22313-1450

Dear Sir:

In regard to the above identified application,

1. We are transmitting herewith the attached:
  - a) Power of Attorney
  - b) Asset Purchase Agreement By and Among Sonicblue Inc., Diamond Multimedia Systems, Inc. and Digital Networks North America, Inc.
  - c) Postcard.
2. With respect to fees:
  - a) No fee is required.
  - b) Please charge any underpayment or credit any overpayment our Deposit Account, No. 13-2490.

Respectfully submitted,

  
Enrique Perez  
Registration No. 43,853

Dated: June 18, 2003

---

**ASSET PURCHASE AGREEMENT**

**BY AND AMONG**

**SONICBLUE INCORPORATED,  
DIAMOND MULTIMEDIA SYSTEMS, INC.**

**AND**

**DIGITAL NETWORKS NORTH AMERICA, INC.**

**DATED AS OF APRIL 24, 2003**

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## EXHIBITS

Exhibit A	Form of Assumption Agreement
Exhibit B	Form of Bill of Sale
Exhibit C	Form of Sale Order
Exhibit D	Form of Escrow Agreement

## ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (this "Agreement") is made and entered into as of this 24th day of April, 2003 by and among SONICblue Incorporated, a Delaware corporation ("SONICblue"), Diamond Multimedia Systems, Inc., a Delaware corporation and wholly owned subsidiary of SONICblue Incorporated ("Diamond"), and, Digital Networks North America, Inc., a Delaware corporation ("Buyer").

WHEREAS, a portion of Seller's business relates to the design, development, marketing and sale of MP3 players (including, without limitation, automotive systems), MP3 peripherals and MP3 accessories (the "Business");

WHEREAS, Seller is currently party to the Chapter 11 Case (as hereinafter defined); and

WHEREAS, Buyer desires to purchase from Seller, and Seller desires to sell to Buyer, certain of Seller's assets related to the Business including principally receivables, inventory, equipment, contracts, intellectual property, real property interests, intangibles and other assets, as more particularly set forth herein, free and clear of Encumbrances (as defined below), and to assume from Seller the Assumed Liabilities pursuant to the terms and subject to the conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants, representations, warranties and agreements hereinafter set forth, and intending to be legally bound hereby, the parties hereto agree as follows:

### ARTICLE I DEFINITIONS

Section 1.1 Definitions. (a) As used in this Agreement, the following terms have the meanings specified in this Section 1.1.

"Accounts Receivable" means (i) any and all accounts, accounts receivable, notes, contract rights, drafts and other forms of claims, demands, employee advances (with respect to employees hired by Buyer as of the Closing Date), instrument, receivables, trade accounts receivable and rights to payment of money or other forms of consideration, whether for goods sold or leased, services performed or to be performed, or otherwise, owned by Seller or in which Seller has any interest, in each case in connection with the Business, together with all guarantees, security agreements, collateral and rights and interests securing the same and any interest or unpaid financing charges accrued thereon, as of the Closing Date, and (ii) all royalty payments arising after the Closing Date from or related to licenses by Seller of Intellectual Property to third parties that are not Assumed Agreements.

"Affiliate" means, with respect to any specified Person, any other Person that directly, or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such specified Person. For purposes of this definition, Affiliate means the power of one or more persons to direct the affairs of the Person controlled by reason of ownership of voting stock, contract or otherwise or the Purchased Assets.

"Assumed Agreements" means all contracts, agreements, personal property leases, commitments, understandings or instruments related to the Business, including the Intellectual Property Agreements, and which are listed on Schedule 2.1 or Schedule 2.5 attached hereto.

"Assumption Agreement" means the Assumption Agreement to be executed and delivered by Buyer and Seller at the Closing, substantially in the form of Exhibit A attached hereto.

"Auction" means the auction held by the Bankruptcy Court for the sale of the Business.

"Bankruptcy Code" means Title 11 of the United States Code, 11 U.S.C. §§ 101, et seq.

"Bankruptcy Court" means the United States Bankruptcy Court for the Northern District of California or such other court having competent jurisdiction over the Chapter 11 Case.

"Bidding Procedures Order" means the order entered by the Bankruptcy Court on March 28, 2003 and amended on April 2, 2003, establishing notice, sales and bidding procedures for sale of the Business.

"Bill of Sale" means the Bill of Sale to be executed and delivered by Seller to Buyer at the Closing, substantially in the form of Exhibit B attached hereto.

"Business Day" means any day that is not a Saturday, Sunday or other day on which banks are required or authorized by law to be closed in San Jose, California.

"Buyer's Representatives" means the Buyer's accountants, employees, counsel, financial advisors and other authorized representatives.

"Cambridge Lease" means the lease dated February 26, 2003 from 3C Technology Limited to DMSL with respect to the real property located at 1 Signet Court, Swanns Road, Cambridge, United Kingdom.

"Cambridge Leased Real Property" means that real property which is the subject of the Cambridge Lease.

"Chapter 11 Case" means Seller's case commenced under Chapter 11 of the Bankruptcy Code, titled SONICblue Incorporated, Case No. 03-51775, in the Bankruptcy Court.

"Closing Encumbrances" means statutory liens for current Taxes or assessments not yet due or delinquent.

"Code" means the Internal Revenue Code of 1986, as amended.

"Confidential Information" means the Information (as defined in the Confidentiality Agreement) furnished to Buyer's Representatives pursuant to the Confidentiality Agreement and subject to the confidentiality provisions thereof, and the confidential information relating to Buyer provided to Seller by Buyer.

"Confidentiality Agreement" means the Confidentiality Agreement by and between Buyer and Seller, dated August 2, 2002.

"Encumbrances" means any mortgages, hypothecations, pledges, liens, claims (including options and rights of first refusal), charges, security interests, conditional and installment sale agreements, activity and use limitations, conservation easements, servitudes, deed restrictions, equitable interests, exceptions to title, encumbrances and charges of any kind.

"Final Order" means an order of the Bankruptcy Court (i) as to which the time to appeal shall have expired and as to which no appeal shall then be pending, or (ii) if an appeal shall have been filed or sought, either (A) no stay of the order shall be in effect or (B) if such a stay shall have been granted by the Bankruptcy Court, then (1) the stay shall have been dissolved or (2) a final order of the district court having jurisdiction to hear such appeal shall have affirmed the order and the time allowed to appeal from such affirmance or to seek review or rehearing thereof shall have expired and the taking or granting of any further hearing, appeal or petition for certiorari shall not be permissible, and if a timely appeal of such district court order or timely motion to seek review or rehearing of such order shall have been made, any court of appeals having jurisdiction to hear such appeal or motion (or any subsequent appeal or motion to seek review or rehearing) shall have affirmed the district court's (or lower appellate court's) order upholding the order of the Bankruptcy Court and the time allowed to appeal from such affirmance or to seek review or rehearing thereof shall have expired and the taking or granting of any further hearing, appeal or petition for certiorari shall not be permissible.

"Governmental Authority" means any federal, municipal, state, county, local, foreign or other governmental, administrative or regulatory authority, department, agency, commission or body.

"Houlihan Fee" means \$1,550,000 (One million five hundred fifty thousand U.S. dollars).

"Intellectual Property" means (a) all discoveries, innovations, inventions and all improvements thereto and all classes and types of patents, including, without limitation, utility models, utility patents and design patents, and all patent applications, and patent disclosures, together with all reissuances, continuations, continuations-in-part, revisions, extensions, and reexaminations thereof, (b) all registered and unregistered trademarks, service marks, trade dress and logos, including all goodwill associated therewith, and all applications, registrations, and renewals in connection therewith, (c) all works of authorship and all copyrights and moral rights therein, whether such works are published or unpublished works, and all applications, registrations and renewals in connection therewith, (d) all



trade secrets, know-how, product prototypes, and all proprietary, technical and non-technical data and information, including, without limitation, customer lists, supplier lists, pricing and cost information, business and marketing plans and other confidential business information, (e) all computer programs and related code and software other than commercially available "off-the-shelf" software, (f) all domain name registrations and URL addresses, (g) all other recognizable proprietary rights, and (h) all copies and tangible embodiments of the foregoing, in each case related to and/or used in the Business and in each case whether arising under the laws of the United States or any jurisdiction world wide.

**"Intellectual Property Agreements"** means all (i) licenses of Intellectual Property to Seller or any of its Affiliates and (ii) licenses of Intellectual Property by Seller or any of its Affiliates to third parties in each case that are primarily related to the Business, described on Schedule 2.1.

**"Inventory"** means the inventories, including inventory reserves, raw materials, work in-process and finished products, of Seller and its Affiliates primarily related to and/or primarily used in the Business, including, without limitation, supplies, materials, packaging, shipping containers and spare parts.

**"Knowledge"** means, as to a particular matter, the actual knowledge of (i) with respect to Buyer, its chief executive officer, its chief financial officer or its general counsel, in each case without independent investigation, and (ii) with respect to Seller, its chief executive officer, its chief financial officer or its general counsel, in each case without independent investigation.

**"Laws"** means any law, statute, regulation, rule, ordinance or Order of a Governmental Authority.

**"Leased Real Property"** means that real property at which any of the Purchased Assets are located.

**"Order"** means any decree, injunction, judgment, order, ruling, writ, quasi-judicial decision or award or administrative decision or award of any Governmental Authority to which any Person is a party or that is or may be binding on any Person or its securities, assets or business.

**"Permit"** means any license, permit, franchise, certificate of authority or order, or any waiver of the foregoing, required to be issued by any Governmental Authority.

**"Person"** means any individual, corporation, partnership, limited partnership, limited liability company, syndicate, group, trust, association or other organization or entity or government, political subdivision, agency or instrumentality of a government.

**"Petition Date"** means the date on which Seller files voluntary petitions under Chapter 11 of the Bankruptcy Code.

**"Retained Trade Names"** means those trademarks, trademark applications, trade names, corporate or other names related to the Business used by Seller and which are not expressly set forth on Schedule 2.1.

**"Sale Hearing"** means the hearing at which the Bankruptcy Court considers approval of the Sale Order.

**"Sale Order"** means the sale order approved by the Bankruptcy Court for the sale of the Business substantially in the form attached as Exhibit C hereto.

**"Schedules"** means the Schedules attached to this Agreement and forming a part of this Agreement.

**"Seller"** means, collectively, SONICblue and Diamond.

**"Seller's Representatives"** means Seller's accountants, employees, counsel, financial advisors and other authorized representatives.

**"Subsidiary"** means, with respect to any Person, (i) any corporation of which more than fifty percent (50%) of the outstanding capital stock having ordinary voting power to elect a majority of the board of directors of such corporation is at the time, directly or indirectly owned by such Person, or (ii) any partnership, limited liability company or joint venture or other entity of which more than fifty percent (50%) of the outstanding equity interests

are at the time, directly or indirectly, owned by such Person. Unless otherwise specified herein, references to a "Subsidiary" or "Subsidiaries" shall mean a Subsidiary or Subsidiaries of Seller.

"Tax" and "Taxes" means all taxes, charges, fees, levies, penalties or other assessments of any kind whatsoever imposed by any federal, provincial, municipal, state, local or foreign taxing authority, including any interest, penalties or additions attributable thereto.

"Tax Return" means any return, report, information return or other document (including any related or supporting information) required to be supplied to any Governmental Authority with respect to Taxes that are related to the Business.

"UK Assets" means all of the right, title and interest that the UK Affiliates possess as of the Closing in and to the assets set forth on Schedule 4.2(e).

"WARN Act" means the Worker Adjustment and Retraining Notification Act, as amended, 29 U.S.C. §§ 2101 - 2109.

(b) Each of the terms set forth below shall have the meaning ascribed thereto in the following Section:

<u>Definition</u>	<u>Location</u>
" <u>Agreement</u> "	Preamble
" <u>Allocation</u> "	§ 7.7(e)
" <u>Assumed Liabilities</u> "	§ 2.3
" <u>Buyer Default Termination</u> "	§ 3.2
" <u>Buyer</u> "	Preamble
" <u>Closing Date</u> "	§ 4.1
" <u>Closing</u> "	§ 4.1
" <u>Cure Expenses</u> "	§ 2.5(c)
" <u>Cure Payments</u> "	§ 2.5(b)
" <u>Deposit</u> "	§ 3.2
" <u>DMSL</u> "	§ 4.2(e)
" <u>Escrow Holder</u> "	§ 3.2
" <u>Escrow</u> "	§ 3.2
" <u>Excluded Contracts</u> "	§ 2.2
" <u>Excluded Liabilities</u> "	§ 2.4
" <u>Execution Date</u> "	§ 3.2
" <u>Improvements</u> "	§ 2.1(c)
" <u>Intangible Property</u> "	§ 2.1(e)
" <u>Personal Property</u> "	§ 2.1(d)
" <u>Purchase Price</u> "	§ 3.1
" <u>Purchased Assets</u> "	§ 2.1
" <u>Receivables</u> "	§ 2.1(f)
" <u>Regulatory Approvals</u> "	§ 7.6(a)
" <u>Seller</u> "	Preamble
" <u>Termination Date</u> "	§ 9.1(e)
" <u>Termination Payment</u> "	§ 7.10
" <u>Third-Party Sale</u> "	§ 7.10
" <u>Transaction Taxes</u> "	§ 7.7(a)
" <u>UK Affiliates</u> "	§ 4.2(e)

Section 1.2 Construction. The terms "hereby," "hereto," "hereunder" and any similar terms as used in this Agreement, refer to this Agreement in its entirety and not only to the particular portion of this Agreement where the term is used. The term "including," when used herein without the qualifier, "without limitation," shall mean "including, without limitation." Wherever in this Agreement the singular number is used, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders, and vice versa, as the context shall require. The word "or" shall not be construed to be exclusive. Provisions shall apply, when

appropriate, to successive events and transactions. Unless otherwise indicated, references to Articles and Sections refer to Articles and Sections of this Agreement.

## ARTICLE II PURCHASE AND SALE

**Section 2.1 Purchase and Sale of Assets.** Upon the terms and subject to the satisfaction of the conditions contained in this Agreement, subject to Section 2.5 as to assumption, and in reliance upon the representations and warranties of Seller and Buyer herein set forth, at the Closing, (i) Seller shall cause the UK Affiliates to assign, convey, transfer and deliver to Buyer the UK Assets, free and clear of all Encumbrances (except for Closing Encumbrances) and Buyer shall acquire from the UK Affiliates the UK Assets, and (ii) Seller shall sell, assign, convey, transfer and deliver to Buyer, and Buyer shall, by payment of the Purchase Price, purchase and acquire from Seller, free and clear of all Encumbrances (except for Closing Encumbrances), the Purchased Assets. "Purchased Assets" means, collectively, all of the right, title and interest that Seller possesses as of the Closing in and to the following assets, wherever located:

(a) to the extent assignable under Section 365 of the Bankruptcy Code or to the extent assignment is consented to by the third party or third parties to such agreements, all Assumed Agreements listed on Schedule 2.1;

(b) all Intellectual Property, including, without limitation, the Intellectual Property listed on Schedule 2.1;

(c) all of those items of equipment and tangible personal property and any other tangible personal property acquired by Seller after the date hereof but prior to the Closing Date used primarily in connection with the Business (collectively, the "Personal Property");

(d) all intangible personal property, but only to the extent of Seller's interest therein, together with all books, records and like items pertaining primarily to the Business (collectively, the "Intangible Property"), provided that the Intangible Property shall in all events exclude (i) any materials containing privileged communications or information about employees, disclosure of which would violate any confidentiality agreement with such employee or any policy of Seller regarding privacy of such information, (ii) any materials which are subject to attorney client or any other legal privilege and (iii) Seller's corporate minute books and stockholder records;

(e) all Accounts Receivable and, subject to Section 2.2, all causes of action relating or pertaining to the foregoing (collectively, the "Receivables");

(f) all Inventory;

(g) all operating data, files, general records, customer lists, correspondence and other written records to the extent relating to the Business and the Purchased Assets, wherever located;

(h) all of the goodwill of Seller and its Affiliates associated with or relating to the Business, the products sold by or on behalf of the Business and the Intellectual Property;

(i) all of the rights to the licenses, Permits, approvals, clearances and authorizations relating to the Business, including any of the foregoing obtained for Seller's benefit held in the name of third parties; and

(j) all rights, claims, credits, judgments, choses in action, rights of set-off or rights for past, present or future infringement against third parties primarily arising out of, relating to or in respect of the Business, the Purchased Assets, the Assumed Agreements, the Intellectual Property, injury to the goodwill associated with the Business or any trademark constituting Intellectual Property or any confidentiality, non-disclosure, invention secrecy, non-competition or non-solicitation obligation owed to Seller or any of Seller's Affiliates (whether such obligation arises under an Assumed Agreement or otherwise), including, without limitation, all causes of action, rights of recovery and rights of set-off of any kind, all rights under express or implied warranties from suppliers to Seller and all other interests in or claims, rebates, refunds or payments from or against vendors.

Section 2.2 Excluded Assets. Notwithstanding any provision herein to the contrary, the Purchased Assets shall not include (i) those items excluded pursuant to the provisions of Section 2.1 above; (ii) all cash and cash equivalents; (iii) Inventory transferred or used by Seller in the ordinary course of the Business prior to the Closing Date; (iv) any lease, rental agreement, contract, agreement, license or similar arrangement (collectively, the "Excluded Contracts," each an "Excluded Contract") which (A) terminates or expires prior to the Closing Date in accordance with its terms (and such termination is enforceable under Section 365 of the Bankruptcy Code) or in the ordinary course of the Business or (B) is not an Assumed Agreement, an agreement listed on Schedule 2.5 or designated to be assigned to Buyer pursuant to Section 2.5; (v) all preference or avoidance claims and actions of the Seller, including, without limitation, any such claims and actions arising under Sections 544, 547, 548, 549, and 550, respectively, of the Bankruptcy Code; (vi) Seller's rights under this Agreement, and all cash and non-cash consideration payable or deliverable to Seller pursuant to the terms and provisions hereof; (vii) insurance proceeds, claims and causes of action with respect to or arising in connection with (A) any Excluded Contract which is not assigned to Buyer at the Closing, or (B) any item of tangible or intangible property not acquired by Buyer at the Closing; (viii) shares of stock of United Microelectronics Corporation owned by Seller or which Seller has the right to acquire; (ix) Seller's right, title and interest to the assets that are primarily related to Seller's GoVideo, modem and graphics chips businesses, including graphics chips patents; (x) Seller's right, title and interest to the assets set forth on Schedule 2.2; and (xi) Seller's assets that are not used in connection with the Business. Through the Closing Date, Buyer may deliver to Seller a list of assets that will be excluded from the transaction and retained by Seller. Any asset so designated shall constitute an Excluded Asset for all purposes under this Agreement as if the same had been expressly identified as an Excluded Asset as of the execution hereof.

Section 2.3 Assumed Liabilities. On the Closing Date, Buyer shall execute and deliver to Seller the Assumption Agreement pursuant to which Buyer shall assume and agree to pay, perform and discharge when due the liabilities and obligations of Seller (the "Assumed Liabilities") as set forth on Schedule 2.3, in accordance with the respective terms and subject to the respective conditions thereof.

Section 2.4 Excluded Liabilities. Notwithstanding anything in this Agreement to the contrary, in no event shall Buyer assume or be obligated to pay, perform or otherwise discharge any liabilities or obligations of Seller other than the Assumed Liabilities (collectively, the "Excluded Liabilities") which shall be retained by and remain liabilities of Seller, including, without limitation, the following:

- (a) all liabilities or obligations associated with or related to any Excluded Asset;
- (b) all liabilities or obligations (notwithstanding the fact that the date on which any action or claim is commenced or made is after the Closing), including but not limited to, any claim, Encumbrance or the like arising prior to the Closing Date;
- (c) any liabilities or obligations arising under any Excluded Contract or this Agreement;
- (d) all accounts payable, except for the Cure Payments and any liability associated with a subsequently designated contract to be assumed pursuant to Section 2.5(a) hereof;
- (e) all liabilities or obligations (including those arising under the WARN Act prior to the Closing), if any, arising out of or resulting from layoffs of Seller's employees prior to the Closing, including any obligation imposed on Seller or Buyer to provide such employee with continued health, disability or life insurance or other benefits (whether covered by insurance or not);
- (f) all liabilities or obligations of Seller for Taxes of any kind whatsoever payable with respect to the Purchased Assets and/or the operation of the Business with respect to any period or portion thereof that ends on or prior to the Closing Date;
- (g) all pre-Closing liabilities or obligations with respect to any employee of Seller;
- (h) all liabilities or obligations due and owing to any Affiliate or arising out of or relating to any agreement with an Affiliate which does not constitute an Assumed Agreement;
- (i) all liabilities or obligations for expenses relating to (i) the negotiation and preparation of this Agreement and the transactions contemplated herein and (ii) the filing of the Chapter 11 Case, in each case, to

the extent incurred by Seller and including those related to their legal counsel, accounting, brokerage and investment advisors fees and disbursements;

(j) all liabilities or obligations related to any shareholder claims, litigation or proceeding against Seller; and

(k) any other liabilities or obligations which are not Assumed Liabilities.

Section 2.5 Assumption of Certain Leases and Other Contracts. The Sale Order shall provide for the assumption by Seller, and the Sale Order shall, to the extent permitted by law, provide for the assignment by Seller to Buyer, effective upon the Closing, of the Assumed Agreements on the following terms and conditions:

(a) At the Closing, Seller shall assign to Buyer and Buyer shall assume the Assumed Agreements set forth on Schedule 2.5. From and after the date hereof through the Closing Date, Seller shall make such deletions to the list of Assumed Agreements as Buyer shall request, and the amount of the Cure Payments and Schedule 2.5 shall be modified accordingly. The Assumed Agreements are identified by the date of the Assumed Agreement (if available), the other party or parties to the Assumed Agreement and the address of such party or parties (if available), as the case may be. To the extent any such information is set forth on Schedule 2.5 and is later determined by Seller to be inaccurate in any material respect, Seller shall promptly notify Buyer of any such inaccuracy. Schedule 2.5 sets forth (i) the estimated amounts necessary to cure defaults, if any, under each of the Assumed Agreements as determined by Seller based on Seller's books and records and (ii) deposits, advances, credits and security deposits made by Seller under each of the Assumed Agreements. At any time following the Sale Hearing and through the date which is three (3) months after the Closing Date, Seller shall promptly notify Buyer if it identifies a contract or agreement to which it or any of its Affiliates is a party related to the Business that has not previously been identified to Buyer and shall simultaneously provide Buyer with a copy of such contract or agreement. At any time following the Sale Hearing and through the date which is thirty (30) days after the Closing Date (subject to the next two sentences), Buyer may notify Seller in writing that Buyer is designating one or more agreements related to the Business, in addition to those set forth on Schedule 2.5, as an agreement to be assigned to Buyer. Notwithstanding the preceding sentence, any contract which Seller provides to Buyer subsequent to the Closing Date that requires any monetary obligation by Seller, including, but not limited to an administrative claim, after receipt of said contract, Buyer shall have five Business Days to notify Seller of whether it intends to assume said contract. Following said five days, Seller is free to reject the contract. Buyer shall have no liability for, and Seller shall not be deemed to have assigned, any agreement until there is an Order of the Bankruptcy Court with respect to said agreement. Seller shall take any other such action as may be reasonably necessary to assign and assume the same, provided Buyer reimburses Seller for any expenses associated therewith. Buyer shall be responsible for all Cure Expenses and shall pay to Seller all Cure Amounts required for the assignment of any such agreement(s) to Buyer.

(b) If there exists on the Closing Date (or thereafter with respect to Assumed Agreements that are subsequently designated) any monetary default under an Assumed Agreement, Buyer shall be responsible for the payment of any and all amounts necessary to cure such default pursuant to Section 365(b)(1) of the Bankruptcy Code as a condition to the assumption and assignment of such Assumed Agreement (the "Cure Payments").

(c) Buyer shall be solely responsible for any and all of its costs and expenses necessary in connection with providing adequate assurance of future performance with respect to any of the Assumed Agreements under Section 365(f) of the Bankruptcy Code (the "Cure Expenses").

(d) In addition to the payment of the Purchase Price and the payment of the Cure Payments, Buyer shall reimburse Seller in cash and in full for any and all deposits, advances and credits and security deposits set forth on Schedule 2.5 (together with the Cure Payments, the "Cure Amounts") and replace as promptly as practicable but no later than 5 Business Days after Closing any letters of credit set forth on Schedule 2.5, in all such cases related to any Assumed Agreements.

### ARTICLE III PURCHASE PRICE; DEPOSIT; ESCROW

Section 3.1 Purchase Price. In consideration for the Purchased Assets, and subject to the terms and conditions of this Agreement, and the entry and effectiveness of the Sale Order, at the Closing Buyer shall assume the Assumed Liabilities, assume the Assumed Agreements, and pay to SONICblue on behalf of Seller an amount equal to \$ 18,200,000 (the "Purchase Price"). On the Closing Date, Buyer shall (i) pay and deliver to SONICblue, by wire transfer of immediately available U.S. funds, the Purchase Price less (x) the Houlihan Fee and (y) the Deposit (and interest accrued thereon), (ii) pay and deliver to Houlihan, by wire transfer of immediately available U.S. funds, the Houlihan Fee (which fee is being paid directly to Houlihan at the request of Seller), and (iii) instruct the Escrow Holder (as defined below) to deliver the Deposit (and any interest accrued thereon) to SONICblue, by wire transfer of immediately available U.S. funds.

Section 3.2 Escrow. Pursuant to the Bidding Procedures Order and prior to the date hereof, the Buyer has delivered to Houlihan Lokey a deposit of \$1,200,000 (the "Deposit") payable to the order of SONICblue Incorporated, to be held in escrow by SONICblue until the Auction. Concurrently with the execution of this Agreement, the Deposit shall be placed into escrow (the "Escrow") with Bank One, N.A. (the "Escrow Holder") and Seller and Buyer shall execute the Escrow Agreement substantially in the form of Exhibit D hereto (the "Escrow Agreement"). The Deposit shall become nonrefundable upon the earlier of (i) the Closing, or (ii) the termination of this Agreement pursuant to Section 9.1(b) (a "Buyer Default Termination"). At the Closing, the Deposit (and any interest accrued thereon) shall be delivered to SONICblue and credited toward payment of the Purchase Price in the manner specified in Section 3.1 above. In the event the Deposit becomes non-refundable by reason of a Buyer Default Termination, Escrow Holder shall, immediately, pursuant to the provisions of the Escrow Agreement, disburse the Deposit and all interest accrued thereon to SONICblue to be retained by SONICblue for its own account. If this Agreement or the transactions contemplated herein are terminated other than a termination which constitutes a Buyer Default Termination, the Escrow Holder shall, immediately, pursuant to the provisions of the Escrow Agreement, return to Buyer the Deposit (together with all interest thereon). The Escrow Holder's escrow fees and charges shall be paid by Buyer.

Section 3.3 Cure Payments. At the Closing, Buyer shall provide the Cure Payments to Seller by wire transfer of immediately available U.S. funds. Seller shall transfer the Cure Payments to the counterparty of each and every Assumed Agreement promptly (but in any event within five (5) Business Days) after receipt of the Cure Payments from Buyer. In the event that the amount required to cure a default under an Assumed Agreement is disputed between Seller and the counterparty to the Assumed Agreement, the amount of such cure payment shall be determined by the Bankruptcy Court. In the event the amount of a Cure Payment related to an Assumed Agreement is not known on the Closing Date, Buyer and Seller shall estimate the amount of the Cure Payment (an "Estimated Cure Payment") and such Estimated Cure Payment shall be placed into an escrow account with an escrow agent, financial institution or company (the "Cure Escrow Holder") reasonably designated by Buyer. If an Estimated Cure Payment is more than the Cure Payment when the amount is known, the excess shall be returned to Buyer and if the Estimated Cure Payment is less than the Cure Payment when the amount is known, Buyer shall pay the additional funds to Seller by wire transfer in immediately available U.S. funds.

### ARTICLE IV THE CLOSING

Section 4.1 Time and Place of the Closing. Upon the terms and subject to the satisfaction of the conditions contained in Article VIII of this Agreement, the closing of the sale of the Purchased Assets and the assumption of the Assumed Liabilities and Assumed Agreements contemplated by this Agreement (the "Closing") shall take place at the offices of Pillsbury Winthrop LLP, 2550 Hanover Street, Palo Alto, California, at 10:00 A.M. (local time) no later than the fifth (5<sup>th</sup>) Business Day following the date on which the conditions set forth in Article VIII have been satisfied (other than the conditions with respect to actions the respective parties hereto will take at the Closing itself) or, to the extent permitted, waived in writing, or at such other place and time as Buyer and Seller may mutually agree. The date and time at which the Closing actually occurs is herein referred to as the "Closing Date."

Section 4.2 Deliveries by Seller. At or prior to the Closing (or as specifically provided in this Section 4.2), Seller shall deliver the following to Buyer:

- (a) the Bill of Sale, duly executed by Seller;
- (b) all consents, waivers and approvals obtained by Seller with respect to the sale, assignment, conveyance, transfer and delivery of the Purchased Assets and the consummation of the transactions required in connection with the sale of the Purchased Assets contemplated by this Agreement, to the extent specifically required hereunder;
- (c) the certificate contemplated by Section 8.2(b);
- (d) certified copies of the resolutions duly adopted by Seller's board of directors authorizing the execution, delivery and performance of this Agreement and each of the other transactions contemplated hereby;
- (e) bills of sale or equivalent documents of transfer acceptable to Buyer, duly executed by Diamond Multimedia Systems Limited ("DMSL"), Empeg Limited, and Diamond Multimedia Systems Services Co., Ltd. (together, the "UK Affiliates"), transferring the UK Assets, free and clear of all Encumbrances (other than Assumed Liabilities and Closing Encumbrances), at no additional cost to Buyer or increase in the Purchase Price;
- (f) the Assumption Agreement, duly executed by Seller and all such other instruments of assignment or conveyance as shall be reasonably necessary to transfer to Buyer all of the Purchased Assets in accordance with this Agreement (to be delivered as of the close of business on the Closing Date);
- (g) a copy of the Sale Order; and
- (h) such other instruments and documents as are necessary in the opinion of Buyer in order to acquire the Purchased Assets free and clear of all Encumbrances (other than Closing Encumbrances and Assumed Liabilities).

**Section 4.3 Deliveries by Buyer.** At or prior to the Closing (or as specifically provided in this Section 4.3), Buyer shall deliver the following to Seller:

- (a) the Purchase Price in accordance with Section 3.1 and Section 3.2;
- (b) the Assumption Agreement, duly executed by Buyer, and all such other instruments of assumption as shall be reasonably necessary for Buyer to assume the Assumed Liabilities in accordance with this Agreement (to be delivered as of the close of business on the Closing Date);
- (c) the Cure Payments in accordance with Section 3.3; and
- (d) the certificate contemplated by Section 8.3(b).

## ARTICLE V REPRESENTATIONS AND WARRANTIES OF SELLER

Seller hereby represents and warrants to Buyer as follows:

**Section 5.1 Authority Relative to this Agreement.** Subject to the applicable provisions of the Bankruptcy Code and the approval of this Agreement by the Bankruptcy Court, Seller has all corporate power to execute and deliver this Agreement and, upon entry and effectiveness of the Sale Order, will have all corporate authority necessary to consummate the transactions contemplated hereby. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly and validly authorized by the board of directors and no other corporate proceedings on the part of Seller are necessary to authorize this Agreement or to consummate the transactions contemplated hereby. This Agreement has been duly and validly executed and delivered by Seller, and assuming that this Agreement constitutes a valid and binding agreement of Buyer, and, subject to the entry and effectiveness of the Sale Order and any applicable Bankruptcy Code provision, constitutes a valid and binding agreement of Seller, enforceable against Seller in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, moratorium or other similar laws affecting or relating to enforcement of creditors' rights generally or general principles of equity.

Section 5.2 No Conflict. Except as described on Schedule 5.2 and except to the extent excused by or unenforceable as a result of the filing of the Chapter 11 Case and except for the entry and effectiveness of the Sale Order, neither the execution and delivery of this Agreement by Seller, the performance of its obligations hereunder nor the consummation of the transactions contemplated by this Agreement will: (a) conflict with or result in any breach of any provision of Seller's Certificate of Incorporation or Bylaws, (b) assuming that all consents, approvals and notices contemplated by Section 5.3 have been obtained and all filings described therein have been made (i) conflict with or violate any Laws or Orders or other binding requirements of a Governmental Authority applicable to Seller or by which its properties are bound or affected (provided that Seller makes no representation or warranty as to the necessity or advisability of any foreign antitrust filing which may be required by virtue of Buyer's status in any foreign jurisdiction); or (ii) result in any breach or violation of or constitute a default (or an event which with notice or lapse of time or both could become a default) or result in the loss of a material benefit under, or give rise to any right of termination, amendment, acceleration or cancellation of, or result in the creation of an Encumbrance on any of the Purchased Assets (provided that the representations and warranties of Seller in this Section 5.2 with respect to Purchased Assets that are Assumed Agreements are made only with respect to those Assumed Agreements listed on Schedule 2.1 or Schedule 2.5 at the execution of this Agreement).

Section 5.3 Required Filings and Consents. Except to the extent excused by or unenforceable as a result of the filing of the Chapter 11 Case and except for the entry and effectiveness of the Sale Order, neither the execution and delivery of this Agreement by Seller, the performance of its obligations hereunder nor the consummation of the transactions contemplated by this Agreement require any consent, approval, authorization or permit of, or filing with or notification to, any Governmental Authority which has not otherwise been obtained or made. Seller makes no representation or warranty as to the necessity or advisability of any foreign antitrust filing which may be required.

Section 5.4 Assets. Except as set forth on Schedule 5.4, Seller has good, marketable and valid title to the Purchased Assets and, at the Closing, Seller or one of its UK Affiliates will have good, marketable and valid title to the UK Assets, and Buyer, pursuant to the Sale Order, shall acquire (subject to such being assumed and assigned in accordance with Section 2.1) all of the Purchased Assets and the UK Assets, in each case free and clear of all Encumbrances, except for Closing Encumbrances. The representations and warranties of Seller in this Section 5.4 with respect to Purchased Assets that are Assumed Agreements are made only with respect to those Assumed Agreements listed on Schedule 2.1 or Schedule 2.5 at the execution of this Agreement.

Section 5.5 Intellectual Property. Except as set forth on Schedule 5.5 hereto, to Seller's Knowledge, (a) Seller owns, or is licensed or otherwise has the right to use (in each case, free and clear of any Encumbrance), all Intellectual Property used in or necessary for the conduct of the Business as currently conducted, (b) no claims are pending or threatened that Seller is infringing on or otherwise violating the rights of a Person with regard to any Intellectual Property and (c) no Person is infringing on or otherwise violating any right of Seller with respect to any Intellectual Property owned by and/or licensed to Seller. To Seller's Knowledge, other than (x) as set forth on Schedule 5.5, (y) the contracts listed on Schedule 7.4 that Buyer does not subsequently assume pursuant to Section 2.5 and (z) the contracts listed on the Exhibits to Seller's Notice of Supplement to Cure Amount Schedules filed with the Bankruptcy Court on April 10, 2003 that are not Assumed Agreements, Schedule 2.1 and Schedule 2.5 together identify all registered Intellectual Property used in the Business and Assumed Agreements including (i) each material license, agreement or other permission which Seller has granted to any third party with respect to any Intellectual Property used in the Business and (ii) each material item of Intellectual Property that any third party owns and that Seller uses in connection with the Business. To Seller's Knowledge, any right to any of the Intellectual Property used in or necessary for the conduct of the Business as currently conducted is valid and enforceable.

Section 5.6 Legal Proceedings and Judgments. Except as set forth on Schedule 5.6, there are no material claims, actions, proceedings or investigations pending or, to Seller's knowledge, threatened against or relating to Seller, the Business or the Purchased Assets before any court or other Governmental Authority acting in an adjudicative capacity that could have a material adverse effect on the Business.

Section 5.7 Compliance with Laws. Seller is in compliance with all Laws and Orders applicable to them, except for such failures to comply which have not or would not reasonably be expected to have, individually or in the aggregate, a material adverse effect on the Business. The Business and operations of Seller is not being operated by Seller in violation of any Laws and Orders.



Section 5.8 Assumed Agreements. Except as set forth in Schedule 5.8, each Assumed Agreement is in full force and effect and is valid and binding obligation of Seller and the other parties thereto, enforceable in accordance with its terms, except as enforceability may be affected by bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar laws relating to or affecting creditors' rights generally and general equitable principles (whether considered in a proceeding in equity or at law). Except as set forth in Schedule 5.8, no event has occurred which (whether with or without notice or lapse of time or both) would constitute a default by Seller under any Assumed Agreements or a default by any other party thereto. True, correct and complete copies (or, if oral, written summaries) of each Assumed Agreement has been made available to Buyer. The representations and warranties of Seller in this Section 5.8 are made only with respect to those Assumed Agreements listed on Schedule 2.1 or Schedule 2.5 at the execution of this Agreement.

Section 5.9 Product Liability. No product sold, distributed, used or delivered by Seller in connection with the Business is subject to any product recall.

Section 5.10 Brokers. Other than the obligation to wire the Houlihan Fee pursuant to Section 3.1 as Seller has requested, Buyer shall have no responsibility for payment of any fees to Houlihan.

Section 5.11 Disclaimer of Other Representations and Warranties. EXCEPT AS EXPRESSLY SET FORTH IN THIS ARTICLE V, SELLER MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AT LAW OR IN EQUITY, IN RESPECT OF ANY OF ITS ASSETS (INCLUDING THE PURCHASED ASSETS AND THE UK ASSETS), LIABILITIES OR OPERATIONS, INCLUDING, WITH RESPECT TO MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, AND ANY SUCH OTHER REPRESENTATIONS OR WARRANTIES ARE HEREBY EXPRESSLY DISCLAIMED. BUYER HEREBY ACKNOWLEDGES AND AGREES THAT, EXCEPT TO THE EXTENT SPECIFICALLY SET FORTH IN THIS ARTICLE V, BUYER IS PURCHASING THE PURCHASED ASSETS AND THE UK ASSETS ON AN "AS-IS, WHERE-IS" BASIS. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, SELLER MAKES NO REPRESENTATION OR WARRANTY REGARDING ANY ASSETS OTHER THAN THE PURCHASED ASSETS, AND NONE SHALL BE IMPLIED AT LAW OR IN EQUITY.

## ARTICLE VI REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer hereby represents and warrants to Seller as follows:

Section 6.1 Authority Relative to this Agreement. Buyer has all corporate power and authority necessary to execute and deliver this Agreement and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly and validly authorized by all necessary corporate proceedings on the part of Buyer. This Agreement has been duly and validly executed and delivered by Buyer, and, assuming that this Agreement constitutes a valid and binding agreement of Seller, constitutes a valid and binding agreement of Buyer, enforceable against Buyer in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, moratorium or other similar laws affecting or relating to enforcement of creditors' rights generally or general principles of equity.

Section 6.2 Consents and Approvals; No Violation. Except for the entry and effectiveness of the Sale Order, neither the execution and delivery of this Agreement by Buyer, nor the purchase by Buyer of the Purchased Assets and the assumption by Buyer of the Assumed Liabilities and the Assumed Agreements pursuant to this Agreement will: (a) conflict with or result in any breach of any provision of Buyer's Certificate of Incorporation or Bylaws; (b) require any consent, approval, authorization or permit of, or filing with or notification to, any Governmental Authority which has not otherwise been obtained or made; or (c) result in a default (or give rise to any right of termination, cancellation or acceleration) under any of the terms, conditions or provisions of any material note, bond, mortgage, indenture, license, agreement, lease or other instrument or obligation to which Buyer is a party or by which any of its assets may be bound, except for such defaults (or rights of termination, cancellation or acceleration) as to which requisite waivers or consents have been obtained.

Section 6.3 Legal Proceedings and Judgments. There are no material claims, actions, proceedings or investigations pending or, to Buyer's knowledge, threatened against or relating to Buyer before any court or other

Governmental Authority acting in an adjudicative capacity that could have a material adverse effect on Buyer's ability to consummate the transactions contemplated hereby.

Section 6.4 Brokers. No Person is entitled to any brokerage, financial advisory, finder's or similar fee or commission payable by Buyer or any of its Affiliates in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of Buyer.

Section 6.5 Buyer Financing. As of the date of this Agreement and on the Closing Date, Buyer has and will have funds sufficient to pay the Purchase Price and all of its fees and expenses incurred in connection with the transactions contemplated hereby, including all Cure Payments and Cure Expenses and any applicable Transaction Taxes for which Buyer shall have payment responsibility pursuant to Section 7.7(a) hereof.

## ARTICLE VII COVENANTS OF THE PARTIES

Section 7.1 Conduct of Business. (a) Except as (1) described on Schedule 7.1, or (2) required by any order of the Bankruptcy Court, the Bankruptcy Code, and any order or agreement related to the use of cash collateral or postpetition financing, during the period commencing on the date of this Agreement and ending on the Closing Date, Seller shall exercise commercially reasonable efforts, in each case taking into account Seller's status as a debtor under Chapter 11 of the Bankruptcy Code, (i) to operate the Business consistent with past custom and practice, (ii) other than as permitted in writing by Buyer, to preserve, in all material respects, the Business, the Purchased Assets, the UK Assets, its employees and its operations, and (iii) to preserve, in all material respects, the goodwill and relationships with customers, suppliers and others having business dealings with the Business. In the event Seller reasonably believes that it can no longer continue, or is requested by a major creditor constituency to cease or terminate, any ongoing business activities or practices which relates to the Purchased Assets, the UK Assets, the Business, the Assumed Agreements identified on Schedule 2.5, or the subsequently designated Assumed Agreements pursuant to Section 2.5, Seller will give Buyer as much notice as reasonably practicable, but no less than three (3) business days and Buyer shall have an opportunity (but not an obligation) to make arrangements to undertake such activities or practices for its own account to the extent necessary to preserve the Business, the Purchased Assets and the UK Assets.

(b) Prior to the Closing Date, Seller shall (i) not sell, lease (as lessor), transfer or otherwise dispose of any of the Purchased Assets or the UK Assets (other than the sale of Inventory in the ordinary course of business consistent with past custom and practice, taking into account Seller's status as a debtor under Chapter 11 of the Bankruptcy Code) and (ii) use good faith, commercially reasonable efforts to prevent the abandonment of the Intellectual Property unless Seller first obtains the written consent of Buyer approving any such abandonment.

(c) With respect to the Leased Real Property, Seller agrees that, between the date of this Agreement and the Closing Date, Seller shall (i) maintain the Leased Real Property in substantially the same condition as exists on the date hereof, reasonable wear and tear excepted, (ii) operate the Leased Real Property in compliance with all applicable laws, rules, regulations and codes in all material respects, (iii) maintain in full force and effect all property and liability insurance policies on the Leased Real Property in effect as of the date hereof and (iv) afford Buyer and Buyer's Representatives reasonable access during normal business hours to the Leased Real Property and all agreements, books, records and other documents and data of Seller related thereto, provided that Seller need not supply Buyer with any information which Seller is under a legal obligation not to supply, including customer-specific costing and pricing information taking into account Seller's status as a debtor under Chapter 11 of the Bankruptcy Code.

(d) During the period commencing on the date of this Agreement and ending on the Closing Date, Seller covenants that it will not, absent the written consent of Buyer, (i) in the case of the Accounts Receivable, change the terms of such Accounts Receivable in a manner that is inconsistent with current practices or (ii) in the case of all sales subsequent to the date hereof, provide for any customer or type of customer terms for sales that are inconsistent with current practices for such customer or type of customer.

Section 7.2 Access to Information; Maintenance of Records.

(a) Between the date of this Agreement and the Closing Date, Seller shall, during ordinary business hours, upon reasonable notice, (i) give Buyer and Buyer's Representatives reasonable access to all books,

records, offices and other facilities constituting the Purchased Assets and the UK Assets to which Buyer is not denied access by law, (ii) permit Buyer to make such reasonable inspections thereof as Buyer may reasonably request, (iii) furnish Buyer with such financial and operating data and other information with respect to the Business as Buyer may from time to time reasonably request; (iv) furnish Buyer with detailed terms of employment, including, without limitation, all information relating to the compensation and benefits, relating to each employee of the Business and (v) permit Buyer to contact any employee of the Business (including any employee of one of Seller's Affiliates so long as such employee is an employee of the Business) regarding potential employment with Buyer following the Closing; provided, however, that (A) any such access shall be conducted in such a manner so as not to interfere unreasonably with the operation of the Business and shall be at the expense of Buyer, (B) Seller shall not be required to take any action which would constitute a waiver of the attorney-client privilege, (C) Seller need not supply Buyer with any information which Seller is under a legal obligation not to supply or any information, documents or materials related to customer-specific costing and pricing information or product development and (D) Buyer shall be under no obligation to offer employment to any employee of the Business following the Closing. Notwithstanding anything in this Section 7.2 to the contrary, Buyer shall not have access to any employee records or other personal and medical records or other records, which in Seller's good faith judgment, are sensitive or the disclosure of which could subject Seller to any risk of liability.

(b) Buyer and Seller acknowledge that they are bound by the Confidentiality Agreement. All information furnished to, or obtained by Buyer, or any of Buyer's Representatives pursuant to this Agreement, shall be subject to the provisions of the Confidentiality Agreement and shall be treated as Confidential Information for all purposes of the Confidentiality Agreement.

(c) Between the Closing Date and the later of (x) the third anniversary of the Closing Date and (y) the date of entry of an order or final decree of the Bankruptcy Court closing the Chapter 11 Case, or if converted to a case under Chapter 7 of the Bankruptcy Code, an order of the Bankruptcy Court closing such case, Seller, the Official Creditors Committee, any successor to Seller and their respective Representatives shall have reasonable access to all of the books and records relating to the operation of the Business, the Purchased Assets and the UK Assets prior to the Closing Date, including all information pertaining to the Assumed Agreements, in the possession of Buyer to the extent that such access may reasonably be required by Seller in connection with the Assumed Liabilities or the Excluded Liabilities, or other matters relating to or affected by the operation of the Business, the Purchased Assets and the UK Assets. Such access shall be afforded by Buyer upon receipt of reasonable advance notice and during normal business hours; provided, however, that (i) any such access shall be conducted in such a manner as not to interfere unreasonably with the operation of the business of Buyer or its Affiliates, (ii) Buyer shall not be required to take any action which would constitute a waiver of the attorney-client privilege, and (iii) Buyer need not supply Seller with any information which Buyer is under a legal obligation not to supply. Seller shall be solely responsible for any costs or expenses incurred by it pursuant to this Section 7.2(c). If Buyer shall desire to dispose of any such books and records upon or prior to the expiration of such period, Buyer shall, prior to such disposition, give Seller a reasonable opportunity at Seller's expense, to segregate and remove such books and records as Seller may select. Buyer acknowledges that Seller has only recently filed its Chapter 11 bankruptcy petitions, has a bankruptcy case to administer and will need to avail itself regularly of the procedures described in this Section 7.2(c).

Section 7.3. Expenses. Except to the extent specifically provided herein or in the Sale Order, whether or not the transactions contemplated hereby are consummated, all costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be borne by the party incurring such costs and expenses.

Section 7.4 Further Assurances. (a) Subject to the terms and conditions of this Agreement, each of the parties hereto shall use commercially reasonable efforts to take, or cause to be taken, all actions, and to do, or cause to be done, all things reasonably necessary, proper or advisable under applicable laws and regulations to consummate and make effective the sale of the Purchased Assets and UK Assets in accordance with this Agreement, including using commercially reasonable efforts to ensure (i) timely satisfaction of the conditions precedent to each party's obligations hereunder and (ii) that, other than (x) the contracts listed on the Exhibits to Seller's Notice of Supplement to Cure Amount Schedules filed with the Bankruptcy Court on April 10, 2003 that are not Assumed Agreements and (y) the contracts set forth on Schedule 7.4 that Buyer does not subsequently assume pursuant to Section 2.5, the Purchased Assets and the UK Assets transferred to Buyer comprise all assets required for the continued conduct of the Business by Buyer as now being conducted by Seller and its Affiliates other than central corporate functions performed by SONICblue on behalf of the Business and its other businesses. Neither Seller, on

the one hand, nor Buyer, on the other hand, shall, without the prior written consent of the other party take any action which would reasonably be expected to prevent or materially impede, interfere with, or delay the transactions contemplated by this Agreement. From time to time, on or after the Closing Date, Seller shall, at Buyer's expense, execute and deliver such documents to Buyer as Buyer may reasonably request in order to more effectively vest in Buyer Seller's title to the Purchased Assets (and the UK Affiliates' title to the UK Assets), subject to Closing Encumbrances, but otherwise free and clear of all Claims and Encumbrances. From time to time after the date hereof, Buyer shall, at Seller's expense, execute and deliver such documents to Seller as Seller may reasonably request in order to more effectively consummate the sale of the Purchased Assets, the transfer of the UK Assets and the assumption and assignment of the Assumed Liabilities and the Assumed Agreements free and clear of all Claims and Encumbrances (subject to Closing Encumbrances) in accordance with this Agreement.

(b) In the event that any Purchased Asset or Assumed Agreement (including any designated by Buyer following Closing) shall not have been conveyed to Buyer at the Closing, Seller shall use its commercially reasonable efforts to convey such Purchased Asset or Assumed Agreement free and clear of all Claims and Encumbrances (subject to Closing Encumbrances) to Buyer as promptly as is practicable after the Closing.

(c) To the extent that Seller's rights under any Assumed Agreement may not be assigned without the consent of another Person, which consent Seller has used commercially reasonable efforts to obtain, but nevertheless such consent has not been obtained, this Agreement shall not constitute an agreement to assign the same if an attempted assignment would constitute a breach thereof or be unlawful, and Seller shall use its commercially reasonable efforts (without being required to make any payment to any third party or to incur any material economic burden and taking into account Seller's status as a debtor under Chapter 11 of the Bankruptcy Code) to obtain any such required consent(s) in respect of any such Assumed Agreement as promptly as practicable; and Buyer agrees to cooperate with Seller in its efforts to obtain any such consent (including the submission of such financial or other information concerning Buyer and the execution of any assumption agreements or similar documents reasonably requested by a third party) without being required to make any payment to any third party or to incur any economic burden.

(d) From and after the Closing Date, Seller shall use its commercially reasonable efforts, including making available any appropriate employees, to assist Buyer in transporting the Purchased Assets and the UK Assets to Buyer's facilities at Buyer's cost.

(e) Seller and Buyer shall each use commercially reasonable efforts (including, on the part of Seller to cause DMSL to use commercially reasonable efforts, without either Seller or DMSL being required to make any payment to any third party or to incur any material economic burden and taking into account Seller's status as a debtor under Chapter 11 of the Bankruptcy Code) to accomplish the assignment and assumption of the Cambridge Lease, including obtaining any required consent of the lessor under such lease, to Buyer as promptly as is practicable after the Closing. As with the Assumed Agreements, Buyer shall be responsible for cure payments, if any, required in order to accomplish the assignment and assumption of such lease.

**Section 7.5      Public Statements.** Seller and Buyer shall consult with each other prior to issuing any public announcement, statement or other disclosure with respect to this Agreement or the transactions contemplated hereby, except that the parties may make disclosures with respect to this Agreement and the transactions contemplated hereby to the extent required by law or by the rules or regulations of any securities exchange or commission and to the extent and under the circumstances in which the parties are expressly permitted by the Confidentiality Agreement to make disclosures of Confidential Information.

**Section 7.6      Governmental Authority Approvals and Cooperation.**

(a) Seller and Buyer shall each use their commercially reasonable efforts to cooperate with each other in determining and making any filings, notifications and requests for approval required to be made and received prior to the Closing under applicable law or regulation (collectively, the "Regulatory Approvals"). In connection with any Regulatory Approvals, neither Buyer nor Seller will, and Buyer and Seller will use their commercially reasonable efforts to cause their officers, directors, partners or other Affiliates not to, take any action which could reasonably be expected to materially and adversely affect the submission of any required filings or notifications or the grant of any such approvals.

(b) Each party hereto (i) shall promptly inform each other of any communication from any Governmental Authority concerning this Agreement, the transactions contemplated hereby and any filing, notification or request for approval related thereto and (ii) shall permit the other party hereto to review in advance any proposed written communication or information submitted to any such Governmental Authority in response thereto. In addition, neither Seller nor Buyer shall agree to participate in any meeting with any Governmental Authority in respect of any filings, investigation or other inquiry with respect to this Agreement, the transactions contemplated hereby or any such filing, notification or request for approval related thereto unless it consults with the other party hereto in advance and, to the extent permitted by any such Governmental Authority, gives the other party hereto the opportunity to attend and participate thereat, in each case to the maximum extent practicable. Subject to any restrictions under applicable laws, rules or regulations, Seller and Buyer shall furnish Buyer or Seller, as the case may be, with copies of all correspondence, filings and communications (and memoranda setting forth the substance thereof) between it and its Affiliates and their respective representatives on the one hand, and the Governmental Authority or members of its staff on the other hand, with respect to this Agreement, the transactions contemplated hereby (excluding documents and communications which are subject to preexisting confidentiality agreements and to the attorney-client privilege or work product doctrine) or any such filing, notification or request for approval related thereto. Seller and Buyer shall also furnish the other party hereto with such necessary information and assistance as such other party and its Affiliates may reasonably request in connection with its preparation of necessary filings, registration or submissions of information to the Governmental Authority in connection with this Agreement, the transactions contemplated hereby and any such filing, notification or request for approval related thereto. Seller and Buyer shall prosecute all required requests for approval with all necessary diligence and otherwise use their respective commercially reasonable efforts to obtain the grant thereof as soon as possible.

#### Section 7.7 Taxes.

(a) Transfer Taxes. The parties recognize and acknowledge that, because the sale, transfer, assignment and delivery of the Purchased Assets is being made in connection with Seller's plan of reorganization, they may be exempt under Section 1146(c) of the Bankruptcy Code and the Sale Order from state and local transfer, recording, stamp or other similar transfer taxes (collectively "Transaction Taxes") that may be imposed by reason of the transactions contemplated by this Agreement; provided, however, that if Transaction Taxes are assessed for any reason, Seller shall pay all such Transaction Taxes along with any recording and filing fees, if applicable. Buyer and Seller agree to cooperate to determine the amount of Transaction Taxes payable in connection with the transactions contemplated under this Agreement. At the Closing, Buyer shall remit to Seller such properly completed resale exemption certificates and other similar certificates or instruments as are applicable to claim available exemptions from the payment of sales, transfer, use or other similar taxes under applicable law. Buyer will cooperate in preparing such forms and will execute and deliver such affidavits and forms as are reasonably requested by Seller. Seller shall, if necessary, and Buyer shall cooperate with Seller to seek any determination of the exemption from Transaction Taxes through submitting any dispute thereof to the state or local government unit charged with responsibility for collection or determination of the disputed tax pursuant to Bankruptcy Code Section 1146(d).

(b) Electronic Transmission of Assets. Seller and Buyer agree that any of the Purchased Assets (including software) that can be transmitted to Buyer electronically will be so delivered to Buyer promptly following the Closing and will not be delivered to Buyer on any tangible medium. Promptly following any electronic transmission, Seller shall execute and deliver to Buyer a certificate in a form reasonably acceptable to Buyer and containing, at a minimum, the following information: (i) the date of transmission; (ii) the time the transmission was commenced and concluded; (iii) the name of the individual who made the transmission; (iv) the signature of such individual; and (v) a general description of the nature of the items transmitted sufficient to distinguish the transmission from other transmissions.

(c) No Withholding. Buyer shall pay the Purchase Price free and clear of withholding or deduction for any Taxes.

(d) FIRPTA Certification. Seller shall deliver to Buyer a certification to the extent required under Section 1445 of the Code in accordance with the Treasury Regulations thereunder.

(e) Allocation of Taxes. Buyer shall be liable for and shall be allocated a pro rata share of the Taxes in respect of the Purchased Assets and UK Assets which accrue after the Closing Date and Seller shall be

liable for and shall be allocated a pro rata share of the Taxes in respect of the Purchased Assets and UK Assets which accrued on or before the Closing Date (even though the Closing Date occurs in the midst of a taxable period).

(f) Allocation of Purchase Price. Buyer and Seller shall (i) attempt in good faith, within thirty (30) days after the determination of the Purchase Price pursuant to Article III, to agree on the allocation of the sum of the Purchase Price and the Assumed Liabilities (and any adjustments thereof) among the Purchased Assets and the UK Assets as of the Closing Date (the "Allocation") in accordance with Section 1060 of the Code and the Treasury Regulations thereunder and (ii) cooperate in connection with the preparation of Internal Revenue Service Form 8594 for its timely filing. Except as otherwise required by applicable law, Buyer and Seller shall report for all Tax purposes all transactions contemplated by this Agreement in a manner consistent with the Allocation, if any, and shall not take any position inconsistent therewith in any Tax Return, in any refund claim, in any litigation or otherwise.

(g) Cooperation. Buyer and Seller agree to furnish or cause to be furnished to each other, as promptly as practicable, such information and assistance relating to Seller's operations as is reasonably necessary for the preparation and filing of any Tax Return, for the preparation for and proof of facts during any tax audit, for the preparation for any tax protest, for the prosecution or defense of any suit or other proceeding relating to tax matters and for the answer of any governmental or regulatory inquiry relating to tax matters.

Section 7.8 Submission for Bankruptcy Court Approval.

(a) Seller shall promptly provide Buyer and its counsel with copies of all notices, filings and orders of the Bankruptcy Court (and other courts) that Seller has in its possession pertaining to the motion for approval of any order related to any of the transactions contemplated by this Agreement.

(b) If the Sale Order or any other orders of the Bankruptcy Court relating to this Agreement or the transactions contemplated hereby, shall be appealed by any Person (or if any petition for certiorari or motion for reconsideration, amendment, clarification, modification, vacation, stay, rehearing or reargument shall be filed with respect to the Sale Order or other such order), subject to rights otherwise arising from this Agreement, Seller and Buyer shall cooperate in taking such steps to prosecute diligently such appeal, petition or motion and Seller and Buyer shall use their commercially reasonable efforts to obtain an expedited resolution of any such appeal, petition or motion.

Section 7.9 Bankruptcy Filings. From and after the date hereof until the Closing Date, Seller shall deliver to Buyer, within a reasonable period of time prior to filing (and in no event later than delivery to the creditors' committees), copies of all pleadings, motions, notices, statements, schedules, applications, reports and other papers that Seller files in the Chapter 11 Case that relate to this Agreement, the sale of the Purchased Assets, the UK Assets, Assumed Agreements, Assumed Liabilities, Buyer, or in any manner relate to or affect the transactions contemplated hereby.

Section 7.10 Leased Real Property.

(a) From and after the Closing Date until the earlier of (i) the date all Purchased Assets have been removed by Buyer or (ii) May 31, 2003, Buyer shall have access to the Leased Real Property sufficient to enable Buyer to remove the Purchased Assets therefrom as promptly as practicable. Through the earlier of such dates, Seller shall permit Buyer to make reasonable use of Seller's Santa Clara Leased Real Property at the address set forth in Section 10.5(a) to facilitate Buyer's commencement of the Business, provided that Buyer agrees to (i) keep such use segregated from other business being conducted on such premises and (ii) indemnify and hold Seller harmless from any loss, liability or damage to the extent directly attributable to Buyer's use of such premises. Buyer and Seller shall use reasonable commercial efforts to cooperate with each other in all matters relating to Buyer's use of Seller's Santa Clara Leased Real Property, including all matters necessary or desirable to permit each party to perform its obligations hereunder. Through such time as Buyer shall make use of the Santa Clara Leased Real Property, Buyer shall pay for all non-rent expenses arising from such use of such real property, including utilities, telephone service, insurance and real property taxes (to the extent Seller is responsible for any such real property taxes).

(b) From and after the Closing Date until the earlier of (i) the date all Purchased Assets have been removed by Buyer, (ii) May 31, 2003, or (iii) the date the assignment and assumption of the Cambridge Lease

to Buyer shall have been accomplished, Seller shall cause DMSL to use commercially reasonable efforts to allow Buyer access to the Cambridge Leased Real Property sufficient to enable Buyer to remove the Purchased Assets therefrom or assume the Cambridge Lease as promptly as practicable. Through the earlier of such dates, Seller shall use its commercially reasonable efforts to cause DMSL to permit Buyer to make reasonable use of the Cambridge Leased Real Property to facilitate Buyer's commencement of the Business, provided that Buyer agrees to indemnify and hold DMSL and Seller harmless from any loss, liability or damage to the extent directly attributable to Buyer's use of such premises. Buyer and Seller shall use reasonable commercial efforts to cooperate with each other in all matters relating to Buyer's use of the Cambridge Leased Real Property, including all matters necessary or desirable to permit each party to perform its obligations hereunder. Through such time as Buyer shall make use of the Cambridge Leased Real Property, Buyer shall pay for all rent and non-rent expenses arising from such use of such real property, including utilities, telephone service, insurance and real property taxes (to the extent DMSL or Seller is responsible for any such real property taxes).

Section 7.11 Power of Attorney; Right of Endorsement, Etc. Effective as of the Closing, Seller hereby constitutes and appoints Buyer and its successors and assigns the true and lawful attorney of Seller with full power of substitution, in the name of Buyer or the name of Seller, on behalf of and for the benefit of Buyer, (a) to collect all Purchased Assets, (b) to endorse, without recourse, checks, notes and other instruments attributable to the Purchased Assets, (c) to defend and compromise all actions, suits or proceedings with respect to any of the Purchased Assets, (d) to institute and prosecute all proceedings which Buyer may deem proper in order to collect, assert or enforce any claim, right or title in or to the Purchased Assets and (e) to do all such reasonable acts and things with respect to the Purchased Assets as Buyer may deem advisable, subject to the consent of Seller, which consent shall not be unreasonably withheld. Seller agrees that the foregoing powers are coupled with an interest and shall be irrevocable by Seller directly or indirectly by the dissolution of Seller or in any other manner. Buyer shall retain for its own account any amounts lawfully collected pursuant to the foregoing powers and Seller shall promptly pay to Buyer any amounts received by Seller after the Closing with respect to the Purchased Assets to which Buyer may be entitled.

Section 7.12 Signage and Labels. Buyer will remove Retained Trade Names from all Purchased Assets and other items related to the Business as soon as practicable but in any event within 60 days after the Closing Date. Buyer may use Retained Trade Names on finished goods inventory that constitutes part of the Purchased Assets but will change or otherwise replace the stamps and dies bearing Retained Names as soon as practicable after the Closing Date. Buyer may not use publicly any business records without first removing or obliterating all portrayals or references to any of Retained Trade Names unless Seller consents prior to such usage.

Section 7.13 Post-Closing Funds. Following the Closing Date, all amounts, whether in the form of cash, proceeds, checks, drafts orders or other instruments for the payment of money, received or recovered by Seller with respect to the Business, the Purchased Assets or the Assumed Agreements shall immediately upon receipt thereof by Seller be paid over and delivered in the form received, but with any necessary endorsements or instruments required for payment to Buyer, and, until so delivered shall not be commingled with any other funds or property but shall be held by Seller upon an express trust for the benefit of Buyer.

Section 7.14 Transition Services.

(a) Payroll and Employee Benefits Services. Subject to the approval of the Bankruptcy Court, from and after the Closing Date, as and to the extent requested by Buyer, Seller shall retain employees offered employment by and with Buyer (provided that such offer is made no later than the first Business Day after the Closing Date and Buyer delivers to Seller a list of all such offerees ("Offeree List") no later than the close of business on the first Business Day after the Closing Date) on Seller's payroll and provide such employees with substantially the same compensation and benefits as they are receiving from Seller immediately prior to the Closing. Such employees shall perform for Buyer substantially the same services as they were performing for Seller immediately prior to the Closing. Seller shall be obligated to continue this arrangement until the earlier of (i) the date on which such employees resign in order to commence employment with Buyer or (ii) with respect to any particular employee, such time as Seller receives notice from Buyer that the employee has rejected Buyer's offer (of which rejection Buyer agrees to notify Seller promptly). Seller shall provide Buyer with reasonable supporting detail of any costs and expenses incurred by Seller pursuant to this paragraph as soon as is practicable following any such payment. Buyer shall promptly (but no later than the third Business Day after any payment by Seller pursuant to this paragraph) reimburse Seller for all costs and expenses incurred by Seller in providing compensation and benefits to such employees for their continuing services as described in the preceding sentences. It is the express

desire and intention of Buyer and Seller to achieve the foregoing commercial arrangement. In the event that the Bankruptcy Court shall not approve any aspect of said arrangement, Buyer and Seller shall use their commercially reasonable efforts to reproduce said commercial arrangement within the limits imposed by the Bankruptcy Court. Buyer shall use commercially reasonable efforts to enable said employees to commence employment with Buyer with such compensation and benefits and other terms and conditions of employment as shall be outlined by Buyer in its offer of employment, but in any event such employment with Buyer, if accepted by the employee, shall commence no later than sixty (60) days following the Closing Date. Nothing in this paragraph shall suggest, imply or otherwise indicate that Buyer has agreed to assume any of Seller's benefits plans, programs or arrangements, which except for Buyer's reimbursement commitment as set forth herein, shall continue to remain the sole and exclusive responsibility of Seller. Nothing in this paragraph shall be construed to suggest that Buyer has any responsibility to reimburse Seller for the payment of any severance benefits, pay in lieu of notice, or any other payments relating to the termination of employment with Seller of any of Seller's employees, whether or not such employee commences employment with Buyer, and any such liabilities arising until and upon (but not after) the Closing shall remain the sole and exclusive responsibility of Seller. Nothing in this paragraph shall require Seller to retain on Seller's payroll or provide compensation and benefits to any employee whom Buyer has not listed on Buyer's Offeree List. Nothing in this paragraph shall constitute a promise of employment by Seller or Buyer for any specified term, or a guarantee of employment with Buyer at all.

(b) Foreign Payroll and Employee Benefits Services. Subject to the approval of the Bankruptcy Court, if required, from and after the Closing Date, as and to the extent requested by Buyer, Seller shall use commercially reasonable efforts to cause each of DMSL and Seller's foreign Affiliates whose employees are located in Japan, Germany and Singapore (together, the "Foreign Affiliates") to retain employees offered employment by and with Buyer (provided that such offer is made no later than the first Business Day after the Closing Date and Buyer delivers to each of Seller and its respective applicable Foreign Affiliate a list of all such offerees (each, a "Foreign Offeree List") no later than the close of business on the first Business Day after the Closing Date) on such Foreign Affiliate's payroll and provide such employees with substantially the same compensation and benefits as they are receiving from such Foreign Affiliate immediately prior to the Closing. Such employees shall perform for Buyer substantially the same services as they were performing for the applicable Foreign Affiliate immediately prior to the Closing. Seller shall use its commercially reasonable efforts to cause the applicable Foreign Affiliate to be obligated to continue this arrangement until the earlier of (i) the date on which such employees resign in order to commence employment with Buyer or (ii) with respect to any particular employee, such time as Seller and the applicable Foreign Affiliate each receive notice from Buyer that the employee has rejected Buyer's offer (of which rejection Buyer agrees to notify Seller and the applicable Foreign Affiliate promptly). Seller shall cause the applicable Foreign Affiliate to provide Buyer reasonable supporting detail of any costs or expenses to be incurred by such Foreign Affiliate pursuant to this paragraph no later than two Business Days prior to any such payment. Buyer shall pay any costs or expenses to be incurred by the Foreign Affiliate in providing compensation and benefits to such employees for their continuing services as described in the preceding sentences no later than one Business Day prior to such Foreign Affiliate making any such payments. No Foreign Affiliate will be obligated to make any payments without prior receipt of the funds for such payment from Buyer. It is the express desire and intention of Buyer and Seller to achieve the foregoing commercial arrangement. In the event that the Bankruptcy Court shall not approve or applicable foreign law shall prohibit any aspect of said arrangement, Buyer shall use its commercially reasonable efforts and Seller shall use its commercially reasonable efforts to cause the Foreign Affiliates to use their commercially reasonable efforts to reproduce said commercial arrangement within the limits imposed by the Bankruptcy Court or applicable foreign law. Buyer shall use commercially reasonable efforts to enable said employees to commence employment with Buyer with such compensation and benefits and other terms and conditions of employment as shall be outlined by Buyer in its offer of employment, but in any event such employment with Buyer, if accepted by the employee, shall commence no later than sixty (60) days following the Closing Date. Nothing in this paragraph shall suggest, imply or otherwise indicate that Buyer has agreed to assume any Foreign Affiliate's benefits plans, programs or arrangements, which except for Buyer's reimbursement commitment as set forth herein, shall continue to remain the sole and exclusive responsibility of the applicable Foreign Affiliate. Nothing in this paragraph shall be construed to suggest that Buyer has any responsibility to reimburse any Foreign Affiliates for the payment of any severance benefits, pay in lieu of notice, or any other payments relating to the termination of employment with the Foreign Affiliates of any of the Foreign Affiliates' employees, whether or not such employee commences employment with Buyer, and any such liabilities arising until and upon (but not after) the Closing shall remain the sole and exclusive responsibility of the respective Foreign Affiliates. Nothing in this paragraph shall require any of the Foreign Affiliates to retain on such Foreign Affiliate's payroll or provide compensation and benefits to any employee whom Buyer has not listed on



Buyer's Foreign Offeree Lists. Nothing in this paragraph shall constitute a promise of employment by Seller, Seller's Affiliates or Buyer for any specified term, or a guarantee of employment with Buyer at all.

(c) Accounting and IT Services. From and after the Closing Date and through the date which is sixty (60) days after the Closing Date, as and to the extent requested by Seller and subject to Seller's approval of the costs to be incurred, other than the costs incurred by Buyer in the ordinary course of business consistent with past practice, Buyer shall provide reasonable accounting and information technology ("IT") services to and as designated by Seller so as to enable Seller to administer its bankruptcy case and wind-down its affairs in an orderly fashion. Seller shall promptly reimburse Buyer for actual costs and expenses incurred by Buyer in providing accounting and IT services. It is the express desire and intention of Buyer and Seller to achieve the foregoing commercial arrangement. In the event that the Bankruptcy Court shall not approve any aspect of said arrangement, Buyer and Seller shall use their commercially reasonable efforts to reproduce said commercial arrangement within the limits imposed by the Bankruptcy Court.

## ARTICLE VIII CONDITIONS TO CLOSING

Section 8.1 Conditions to Each Party's Obligations to Effect the Closing. The respective obligations of each party to effect the sale and purchase of the Purchased Assets and the transfer of the UK Assets shall be subject to the fulfillment at or prior to the Closing Date of the following conditions:

(a) no preliminary or permanent injunction, stay pending appeal or other order or decree by any federal or state court which prevents the consummation of the sale of any material part of the Purchased Assets or the UK Assets contemplated hereby shall have been issued and remain in effect (each party agreeing to use commercially reasonable efforts to have any such injunction, order or decree lifted) and no statute, rule or regulation shall have been enacted by any Governmental Authority which prohibits the consummation of the sale of the Purchased Assets and the transfer of the UK Assets; and

(b) the Sale Order shall have been entered by the Bankruptcy Court, shall have become a Final Order and shall be substantially in the form of Exhibit C hereto.

Any condition specified in this Section 8.1 may be waived by Buyer; provided that no such waiver shall be effective against Buyer unless it is set forth in a writing executed by Buyer.

Section 8.2 Conditions to Obligations of Buyer. The obligation of Buyer to effect the purchase of the Purchased Assets and the assumption of the Assumed Liabilities and Assumed Agreements contemplated by this Agreement shall be subject to the fulfillment at or prior to the Closing Date of the following additional conditions:

(a) Seller shall have performed and complied in all material respects with the covenants contained in this Agreement which are required to be performed and complied with by Seller on or prior to the Closing Date and the representations and warranties of Seller which are set forth in this Agreement shall be true and correct in all material respects as of the date of this Agreement and as of the Closing Date (except to the extent that any such representation or warranty speaks as of a particular date) as though made at and as of the Closing Date;

(b) Buyer shall have received a certificate from an executive officer of Seller, dated as of the Closing Date, to the effect that, to the best of such executive officer's knowledge, the conditions set forth in Section 8.2(a) have been satisfied;

(c) Buyer shall have received the other items to be delivered to it pursuant to Section 4.2.

Any condition specified in this Section 8.2 may be waived by Buyer; provided that no such waiver shall be effective against Buyer unless it is set forth in a writing executed by Buyer.

Section 8.3 Conditions to Obligations of Seller. The obligation of Seller to effect the sale of the Purchased Assets and transfer of the UK Assets contemplated by this Agreement shall be subject to the fulfillment at or prior to the Closing Date of the following additional conditions:

(a) Buyer shall have performed and complied in all material respects with the covenants contained in this Agreement which are required to be performed and complied with by Buyer on or prior to the Closing Date and the representations and warranties of Buyer which are set forth in this Agreement shall be true and correct in all material respects as of the date of this Agreement and as of the Closing Date (except to the extent that any such representation or warranty speaks as of a particular date) as though made at and as of the Closing Date;

(b) Seller shall have received a certificate from an authorized officer of Buyer, dated as of the Closing Date, to the effect that, to the best of such officer's knowledge, the conditions set forth in Section 8.3(a) have been satisfied;

(c) Seller shall have received the other items to be delivered to it pursuant to Section 4.3.

Any condition specified in this Section 8.3 may be waived by Seller; provided that no such waiver shall be effective against Seller unless it is set forth in a writing executed by Seller.

## ARTICLE IX TERMINATION AND ABANDONMENT

Section 9.1 Termination. This Agreement may be terminated at any time prior to the Closing Date by:

(a) mutual written consent of Seller and Buyer;

(b) Seller, if there has been a material violation or breach by Buyer of any covenant, representation or warranty made by it contained in this Agreement which has prevented the satisfaction of any condition to the obligations of Seller to effect the Closing and such violation or breach has not been cured by Buyer within ten (10) Business Days of receipt of written notice thereof or is waived by Seller;

(c) Seller or Buyer, if (i) there shall be any law or regulation that makes consummation of the transactions contemplated hereby illegal or otherwise prohibited or (ii) there shall be any nonappealable final order, decree or judgment of (A) the Bankruptcy Court or (B) any other court or Governmental Authority having competent jurisdiction which prohibits the consummation of the transactions contemplated hereby or otherwise alters the terms and conditions of the transactions contemplated hereby in any material respect;

(d) Buyer or Seller, if the Sale Order has not been entered by the Bankruptcy Court within thirty (30) days after the Sale Hearing; provided that Buyer or Seller, as the case may be, shall not be entitled to terminate this Agreement pursuant to this Section 9.1(d) if the failure to obtain the Sale Order within such time period results primarily from such party itself breaching any representation, warranty or covenant contained in this Agreement;

(e) Buyer or Seller, if the Closing shall not have occurred on or prior to May 31, 2003 (the "Termination Date"), unless extended by mutual written agreement of Buyer and Seller; provided that Buyer or Seller, as the case may be, shall not be entitled to terminate this Agreement pursuant to this Section 9.1(e) if the failure of the Closing to occur on or prior to such date results primarily from such party itself breaching any representation, warranty or covenant contained in this Agreement;

(f) Buyer (i) if the Sale Order has not become a Final Order within 20 days after the date the Sale Order is entered by the Bankruptcy Court or (ii) if on or before May 31, 2003, the Chapter 11 Case is dismissed or converted to Chapter 7 of the Bankruptcy Code or a trustee is appointed for Seller and if any subsequent trustee does not expressly consent to and assume Seller's obligations under this Agreement on or prior to May 31, 2003; or

(g) Buyer, if there has been a material violation or breach by Seller of any covenant, representation or warranty made by it contained in this Agreement which has prevented the satisfaction of any condition to the obligations of Buyer to effect the Closing and such violation or breach has not been cured by Seller within ten (10) Business Days of receipt of written notice thereof or is waived by Buyer.

Section 9.2 Procedure and Effect of Termination. In the event of termination of this Agreement and abandonment of the transactions contemplated hereby by either or both of the parties pursuant to Section 9.1, written

notice thereof shall forthwith be given by the terminating party to the other party and this Agreement shall terminate and the transactions contemplated hereby shall be abandoned, without further order of the Bankruptcy Court and without further action by any of the parties hereto. If this Agreement is terminated as provided herein: (i) all filings, applications and other submissions made pursuant to this Agreement, to the extent practicable, shall be withdrawn from the agency or other Person to which they were made; and (ii) Confidential Information from Seller shall be returned to Seller, and all Confidential Information from Buyer shall be returned to Buyer.

## ARTICLE X MISCELLANEOUS PROVISIONS

Section 10.1 Amendment and Modification. This Agreement may be amended, modified or supplemented only by written agreement of Seller and Buyer.

Section 10.2 Waiver of Compliance; Consents. Except as otherwise provided in this Agreement, any failure of any of the parties to comply with any obligation, covenant or condition herein may be waived by the party or parties entitled to the benefits thereof only by a written instrument signed by the party or parties granting such waiver, but such waiver or failure to insist upon strict compliance with such obligation, covenant, or condition shall not operate as a waiver of, or estoppel with respect to any subsequent or other failure. No delay on the part of any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof. No waiver on the part of any party of any such right, power or privilege, and no single or partial exercise of any such right, power or privilege, shall preclude any further exercise thereof or the exercise of any other such right, power or privilege.

Section 10.3 Survival. The parties hereto agree that the representations and warranties contained in this Agreement shall not survive the Closing hereunder, and neither of the parties nor any of their respective officers, directors, representatives, employees, advisors or agents shall have any liability to the other after the Closing for any breach thereof. The parties hereto agree that only the covenants contained in this Agreement to be performed at or after the Closing Date shall survive the Closing hereunder, and each party hereto shall be liable to the other after the Closing Date for any breach thereof.

Section 10.4 No Impediment to Liquidation. Nothing herein shall be deemed or construed as to limit, restrict or impose any impediment to Seller's right to liquidate, dissolve and wind-up its affairs and to cease all business activities and operations at such time as it may determine following the Closing.

Section 10.5 Notices. All notices and other communications hereunder shall be in writing and shall be deemed given (i) when personally sent/delivered, by facsimile transmission (with hard copy to follow) or sent by reputable express courier or (ii) five (5) days following mailing by registered or certified mail postage prepaid and return receipt requested. Unless another address is specified in writing, notices, demands and communications to Seller and Buyer shall be sent to the addresses indicated below:

(a) If to Seller, to:

SONICblue Incorporated  
2841 Mission College Blvd.  
Santa Clara, CA 95054  
Phone: (408) 588-8000  
Facsimile: (408) 980-5444  
Attention: Chief Financial Officer

with a copy to:

Pillsbury Winthrop LLP  
2550 Hanover Street  
Palo Alto, CA 94304-1115  
Phone: (650) 233-4500  
Facsimile: (650) 233-4545  
Attention: Gabriella A. Lombardi  
Craig A. Barbarosh

(b) If to Buyer, to:

Digital Networks North America, Inc.  
19 Chapin Road, Building C  
Pine Brook, New Jersey 07058-9777  
Phone: (973) 396-7475  
Facsimile: (973) 396-7516  
Attention: Dom Golio

with a copy to:

Simpson Thacher & Bartlett  
10 Universal City Plaza  
Suite 1850  
Los Angeles, CA 91608  
Phone: (818) 755-9614  
Facsimile: (818) 755-7009  
Attention: Daniel Clivner

with a copy to:

Simpson Thacher & Bartlett  
425 Lexington Avenue  
New York, New York 10017-3954  
Phone: (212) 455-2000  
Facsimile: (212) 455-2502  
Attention: Kenneth S. Ziman

Section 10.6 Assignment. This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns and with respect to Seller, any entity that may succeed to substantially all the assets of Seller, but neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by Buyer hereto, including by operation of law, without the prior written consent of Seller, provided, however, that this Agreement shall be assignable by Buyer, without the prior written consent of Seller, to an Affiliate of Buyer, so long as Buyer shall continue to remain obligated hereunder. Any assignment of this Agreement or any of the rights, interests or obligations hereunder in contravention of this Section 10.6 shall be null and void and shall not bind or be recognized by Seller or Buyer.

Section 10.7 Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of law or public policy, all other terms, conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the fullest extent possible.

Section 10.8 Governing Law. This Agreement shall be governed by the laws of the State of California, without giving effect to the principles of conflicts of laws thereof, and by the laws of the United States of America.

Section 10.9 Submission to Jurisdiction. Unless and to the extent otherwise specifically provided herein, the parties hereto irrevocably submit to the exclusive jurisdiction of the Bankruptcy Court (or any court exercising appellate jurisdiction over the Bankruptcy Court) over any dispute arising out of or relating to this Agreement or any other agreement or instrument contemplated hereby or entered into in connection herewith or any of the transactions contemplated hereby or thereby. Each party hereby irrevocably agrees that all claims in respect of such dispute or proceedings may be heard and determined in such courts. The parties hereby irrevocably waive, to the fullest extent permitted by applicable law, any objection which they may now or hereafter have to the laying

of venue of any such dispute or proceeding brought in such courts or any defense of inconvenient forum in connection therewith.

Section 10.10 Counterparts. This Agreement may be executed and delivered (including by facsimile transmission) in one or more counterparts, and by the different parties hereto in separate counterparts, each of which, when executed and delivered, shall be deemed to be an original but all of which taken together shall constitute one and the same agreement.

Section 10.11 Incorporation of Exhibits. All Schedules and all Exhibits attached hereto and referred to herein are hereby incorporated herein by reference and made a part of this Agreement for all purposes as if fully set forth herein.

Section 10.12 Entire Agreement. This Agreement (including all Schedules and all Exhibits) and the Confidentiality Agreement constitute the entire agreement among the parties with respect to the subject matter hereof and supersede all prior agreements and understandings among the parties with respect thereto.

Section 10.13 Remedies. Seller and Buyer hereby acknowledge and agree that money damages may not be an adequate remedy for any breach or threatened breach of any of the provisions of this Agreement and that, in such event, Seller or its respective successors or assigns, or Buyer or its successors or assigns, as the case may be, may, in addition to any other rights and remedies existing in their favor, apply to the Bankruptcy Court or any other court of competent jurisdiction for specific performance, injunctive and/or other relief in order to enforce or prevent any violations of this Agreement. Any liability on the part of Seller shall be deemed to be an expense of administration of the Chapter 11 Case and any related bankruptcy proceeding under Section 503(b) and 507(a) of the Bankruptcy Code.

Section 10.14 Headings. The descriptive headings contained in this Agreement are included for convenience of reference only and shall not affect in any way the meaning or interpretation of this Agreement.

Section 10.15 Third Party Beneficiaries. Nothing in this Agreement shall confer any rights upon any Person other than the parties hereto and their respective heirs, legal representatives, successors and permitted assigns.

\* \* \* \* \*

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first above written by their respective officers thereunto duly authorized.

**SELLER:**

**SONICBLUE INCORPORATED**

By: 

Name: MARCUS SMITH

Title: Chief Financial Officer

**DIAMOND MULTIMEDIA SYSTEMS, INC.**

By: 

Name: MARCUS SMITH

Title: Chief Financial Officer

**BUYER:**

**DIGITAL NETWORKS NORTH  
AMERICA, INC.**

\_\_\_\_\_  
Name:

Title:

IN WITNESS WHEREOF, this Agreement has been executed by the parties  
hereto as of the date first above written.

**SELLER:**

**SONICBLUE INCORPORATED**

By: \_\_\_\_\_  
Name:  
Title:

**DIAMOND MULTIMEDIA SYSTEMS, INC.**

By: \_\_\_\_\_  
Name:  
Title:

**BUYER:**

**DIGITAL NETWORK NORTH AMERICA, INC.**

By: \_\_\_\_\_  
Name: *Seamus*  
Title: *COR*

**Schedule 2.1**  
**Purchased Assets**

**Intellectual Property**

The Intellectual Property Agreements are listed on Schedule 2.5 and are incorporated herein by reference.

**Patents and Patent Applications**

1.	Patent No. D451,900 (United States)	Audio Player Apparatus
2.	Patent No. D451,899 (United States)	Audio Player Apparatus
3.	Application No. 89308364 (Taiwan)	Audio Player Apparatus
4.	Serial No. 09/773,956 (United States)	Method and Apparatus for Parametrically Sorting Music Files
5.	Serial No. 09/967,793 (United States)	Auto Generated Playlists from Search Criteria
6.	Serial No. 09/992,091 (United States)	Remote-directed Management of Media Content
7.	Serial No. 10/123,955 (United States)	Content Information as Spoken Audio
8.	Serial No. 10/123,977 (United States)	Interleaving of Information into Compressed Digital Audio Streams
9.	Serial No. 09/993,982 (United States)	Use of Database Queries for Manipulation of Media Content
10.	Serial No. 09/918,756 (United States)	Memory Expansion for a Form-factor Constrained Portable Audio Device
11.	Serial No. 10/208,456 (United States)	Automated Playlist Generation
12.	Serial No. 09/881,900 (United States)	Personal Audio Player with a Removable Multi-Function Module
13.	Serial No. 09/747,351 (United States)	Enabling Protected Digital Media to be Shared between Playback Devices
14.	Serial No. 09/783,224 (United States)	Ensuring Legitimacy of Digital Media
15.	Serial No. 09/061,647 (United States) <sup>1</sup>	MPEG Portable Sound Producing System and a Reproducing Method Thereof
16.	Serial No. 10/059,777 (United States) <sup>2</sup>	MPEG Portable Sound Producing System and a Reproducing Method Thereof
17.	Serial No. 10/066,552 (United States)	Expansion Peripheral Techniques for Portable Audio Player
18.	Application No. 98114958.8 (China) <sup>3</sup>	MPEG Portable Sound Producing System and a Reproducing Method Thereof
19.	Application No. 98201235.3 (Europe) <sup>4</sup>	MPEG Portable Sound Producing System and a Reproducing Method Thereof

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<sup>1</sup> Application is jointly owned by SONICblue Incorporated and Mpman.com Co., Ltd.  
<sup>2</sup> Application is jointly owned by SONICblue Incorporated and Mpman.com Co., Ltd.  
<sup>3</sup> Application is jointly owned by SONICblue Incorporated and Mpman.com Co., Ltd.  
<sup>4</sup> Application is jointly owned by SONICblue Incorporated and Mpman.com Co., Ltd.



20.	Serial No. 40011821.1 (Germany)	Audio Player Apparatus
21.	Serial No. 40103345.7 (Germany)	Audio Player Apparatus
22.	Serial No. 007430 (France)	Audio Player Apparatus
23.	Serial No. 012258 (France)	Audio Player Apparatus
24.	Application No. 1,118,761 (Japan)	Audio Player Apparatus
25.	Application No. 1,130,523 (Japan)	Audio Player Apparatus
26.	Application No. 2002-35391 (Japan)	Ensuring Legitimacy of Digital Media
27.	Application No. 10-116444 (Japan) <sup>5</sup>	MPEG Portable Sound Producing System and a Reproducing Method Thereof
28.	Patent No. 287366 (Korea) <sup>6</sup>	MPEG Portable Sound Producing System and a Reproducing Method Thereof
29.	Registration No. 305232 (Korea)	Audio Player Apparatus
30.	Application No. 89308364 (Taiwan)	Audio Player Apparatus
31.	Registration No. 2097902 (United Kingdom)	Audio Player Apparatus
32.	Serial No. 0203415.5 (United Kingdom)	Ensuring Legitimacy of Digital Media
33.	Serial No. PCT/US01/41018	Personal Audio Player with a Removable Multi-Function Module
34.	Serial No. PCT/US01/50294	Enabling Protected Digital Media to be Shared between Playback Devices
35.	Serial No. 09/903,040 (United States)	Apparatus and Method to Synchronize Multimedia Playback Over a Network using Out-of-Band Signaling
36.	Registration No. 294749 (Korea)	Audio Player Apparatus

<sup>5</sup> Application is jointly owned by SONICblue Incorporated and Mpman.com Co., Ltd.

<sup>6</sup> Patent is jointly owned by SONICblue Incorporated and Mpman.com Co., Ltd. In October 2002, an invalidation action was brought before the Korean Intellectual Property Tribunal (the "Tribunal") of the Korean Intellectual Property Office regarding Patent No. 287366 (the "Patent"). The Tribunal invalidated certain of the Patent's claims. MPMan has appealed the Tribunal's decision to the Patent Court.

#### Domain Names

Rioriot.net

Rioriot.com

Riosong.com

Riotalk.com

Rioaudito.com

Riomanager.com

Riobroadcast.com

Riodj.com

Rioplay.com

Rioplus.com

Rioportdirect.com

Riotraining.com

Riotunes.com

Riotv.com

Rioworld.com

Go2rio.com

Rioportable.com

Riohomeaudio.com

Rioscene.com

Rioreceiver.com

Rioteen.com

Rioboombbox.com

Riovolt.com

Riozone.com

Riol200.com

Riohome.com

Riostuff.com

Riobringit.com

Granitestar.com

Riomac.com

#### Registered Copyrights

None.

**Trademarks Registered and Pending**

1.	Registration No. 2,311,043 (United States)	RJO
2.	Registration No. 2,609,473 (United States)	RIOVOLT
3.	Application No. 76/164,711 (Allowed) (United States)	I'M LISTENING
4.	Application No. 761067,000 (Allowed) (United States)	RJO STUFF DIGITAL AUDIO ACCESSORIES & DESIGN
5.	Application No. 76/153,393 (Allowed) (United States)	RIOSOLO
6.	Application No. 2.289.318 (Opposed) (Argentina)*	RJO
7.	Registration No. 832398 (Australia)*	RJO
8.	Application No. 822762285 (Published) (Brazil)*	RJO
9.	Application No. 1076620 (Published) (Canada)*	RJO
10.	Registration No. 591,026 (Chile)*	RJO
11.	Registration No. 1634309 (China)*	RJO
12.	Registration No. 001615822 (European Community)*	RJO
13.	Registration No. 003022483 (France)*	RJO
14.	Registration No. 30030321 (Germany)*	RJO
15.	Registration No. 4500459 (Japan)*	RJO
16.	Registration No. 615474 (New Zealand)*	RJO
17.	Registration No. T00/08979 (Singapore)*	RJO
18.	Application No. 2000/10474 (Pending) (South Africa)*	RJO
19.	Registration No. 952804 (Taiwan)*	RJO
20.	Registration No. 2230356 (United Kingdom)*	RJO
21.	Application No. 76/112340 (United States)	RIOPORT
22.	Application No. 76/112779 (United States)	RIOPORT.COM

\* Completion of transfer from Rioport.com to SONICblue requires execution of additional assignment documents. Such documents have not been signed by Rioport, but Rioport has granted SONICblue a power of attorney.

**Assumed Agreements**

The Assumed Agreements are listed on Schedule 2.5 hereto and are incorporated herein by reference.